

ORDINANCE NO. 3055

ORDINANCE AMENDING ARTICLE VII (HOUSING CODE) OF CHAPTER 4 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1: Article VII of Chapter 4, (Housing Code), of the Code of Ordinances be and is hereby repealed in its entirety and a new Article VII, inserted as follows:

Sec. 4-191 – 4-200. Reserved.

Sec. 4-201. Housing Code Established, Title.

There are hereby established rules and regulations for the repair or elimination of unfit and/or unsafe housing conditions in the City of Asheville, North Carolina, which shall be known as "The Minimum Housing Code of the City of Asheville" (herein "Code").

Sec. 4-202. Exercise of Police Powers: Authority.

The City Council hereby finds and declares that there exist in the City of Asheville dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light, or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the City of Asheville, and that a public necessity exists to exercise the police powers of the City pursuant to Article 19 of Chapter 160A of the General Statutes of North Carolina, as now or hereafter amended, to repair, close, or demolish such dwellings in accordance with the procedure herein provided.

Sec. 4-203. Purpose.

The purpose of this Code is to remedy and prevent the decay and deterioration of places of human habitation or intended for human habitation by providing minimum requirements for the protection of the life, health, welfare, safety, and property of the general public and the owners and occupants of places of human habitation.

Sec. 4-204. Scope.

The provisions of this Code are applicable to all existing dwellings and all dwellings hereafter constructed within the City of Asheville, which are used or intended for use for human habitation. Demountable dwellings or demountable dwellings being moved and temporarily stored prior to relocation, when used or intended for use for human habitation with the City, shall be subject to the applicable provisions of this Code.

Sec. 4-205. Definitions.

For the purposes of this article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

*Apartment house:* Any dwelling which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other in dwelling units.

*Approved:* Performed in a manner and/or with materials consistent with the North Carolina State Building Code in effect at the time of construction or substantial renovation unless otherwise provided herein.

*Area:*

*Area as applied to the dimensions of a dwelling:* The maximum horizontal projected area of the dwelling at grade.

*Area as applied to the dimensions of a room:* The total square footage of floor area between finished walls.

*Basement:* A story having a clear height of at least seven feet from finished floor to finished ceiling, the floor level of which is below finished grade but not less than four feet below the average finished grade, having floor and walls of approved construction.

*Bed and Breakfast:* A private, owner occupied dwelling where overnight accommodations and a morning meal are provided to transients for compensation.

*Boarding house (or rooming house):* Any dwelling unit or that part of any dwelling unit containing one or more rooms in which space is let by the resident owner or operator to three or more tenants.

*Building:* That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. The term "building" shall be construed as if followed by the words "or part thereof."

*Ceiling height:* The clear vertical distance from the finished floor to the finished ceiling.

*City:* City of Asheville, North Carolina.

*Code Enforcement Officer:* The officer or officers who are authorized by this ordinance to exercise the powers prescribed herein.

*Component:* A readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails where many similar pieces make up the component

*Condemn:* To deem unfit for occupancy.

*Deflection:* The sagging of a structural member.

*Demolish:* The tearing down and disposal of the entire dwelling in a lawful manner, leaving the property free and clear of any debris and without holes or pockets.

*Deteriorated:* A dwelling that is unfit for human habitation or unsafe and can be repaired, altered, or improved to comply with all of the standards established by this Code at a cost not in excess of 50 percent of its value, as determined by finding of the Director.

*Dilapidated:* A dwelling that is unfit for human habitation or unsafe and cannot be repaired, altered, or improved to comply with all of the standards established by this Code at a cost in excess of 50 percent of its value, as determined by findings of the Director.

*Director:* The person in charge of the Building Safety Department.

*Dwelling:* Any building or structure, or part thereof, used and occupied for human habitation or intended to be so used, and including any outhouses and appurtenances belonging thereto or usually enjoyed therewith, apartment houses, boarding or rooming houses, hotels, motels and other transient places of habitation and dwelling unit.

*Dwelling unit:* Any room or group of rooms located within a dwelling and forming a habitation unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

*Exit:* A clear and unobstructed way of departure from the interior of a dwelling to the exterior at street or grade level.

*Extermination:* The control and elimination of insects, rodents, and other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poisoning, spraying, fumigating, trapping, or by any other recognized and lawful pest elimination method.

*Family:* One or more persons living together and having common housekeeping facilities.

*Functional drainage:* A drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.

*Functional flow:* A reasonable flow at a fixture in a dwelling when another fixture is operated simultaneously.

*Garbage:* Waste produced by the handling, processing, preparation, cooking and consumption of animal or vegetable products used for human consumption. This definition shall include any other matter that is also subject to decomposition, decay, putrefaction or the generation of noxious or offensive gases or odors or which before, during or after decay may serve as feeding or breeding material for animals or flies or other insects.

*Habitable space or habitable room:* Any room or enclosed floor space in a dwelling used or intended for use for living, sleeping, cooking, or eating, including kitchens, but excluding bathrooms, toilets, halls, corridors, pantries, storage space, closets, laundries, and other spaces not used frequently or during extended periods.

*Housing Certificate:* A written document issued by the Housing Division, stating that the named dwelling appears to comply with the minimum requirements of this Code at the time of the inspection. The Housing Certificate does not convey any guarantee or warranties on any building system or component.

*Housing Code Coordinator:* The individual responsible for the administration and enforcement of the Housing Code.

*Housing Code Division:* The office and staff of the Housing Code Coordinator of the City of Asheville.

*Imminent Danger:* A condition which places life, limb, or property in immediate peril.

*Inspect:* The act of examining areas and parts of a dwelling to determine its compliance with the standards set out in this Code. Housing inspections are primarily visual and not technically exhaustive.

*Life Safety Review:* An inspection of a dwelling for compliance with Section 4-209 of this Code for unsafe conditions.

*Normal operating controls:* Homeowner operated devices such as a thermostat, wall switch, or safety switch.

*North Carolina State Building Code or North Carolina Building Code:* Any or all volumes of the North Carolina State Building Code as promulgated by the North Carolina State Building Code Council.

*Occupant:* Any individual living or sleeping in a building, or having possession of space within a building.

*Owner:* The holder of the title in fee simple and every mortgagee of record.

*Owner occupied:* The primary residence of the owner.

*Parties in interest:* All individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

*Pier:* A post, pole or column of masonry, concrete, steel or pressure-treated wood extending from a concrete or masonry footing to and supporting the building or portion thereof.

*Plumbing:* The water supply system, sanitary drainage system, vent system, fixtures, and traps and shall include their respective connections, devices, appliances, and appurtenances within the property lines of the premises.

*Public space or common space:* That space within any dwelling which is open to use by the general public or to occupants of more than one dwelling.

*Readily accessible:* Having direct access without the need of moving furniture, removing any panel, door or similar covering, and without the use of portable ladders, chairs, etc.

*Rubbish:* Combustible and noncombustible waste materials, except garbage; including, but not limited to, ashes, wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, excelsior, rubber, leather, tree branches, yard trimmings, leaves, tin cans, metals, mineral matter, glass, crockery, dust, and dirt.

*Story:* That part of the dwelling comprised between a floor and the floor or roof next above having the required amount of ceiling height.

*Technically exhaustive:* An inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings and conclusions.

*Tenant:* A person, corporation, partnership or group, whether or not the legal owner of record, occupying a dwelling or dwelling unit by right or title.

*Unfit:* Unsuitable for human occupancy as set forth under the provisions of this Code.

*Unsafe:* Especially dangerous to life because of a dwelling's liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, dangerous wiring or heating system, inadequate means of egress, or other causes or conditions enumerated in Section 4-209(a) of this Code.

#### Sec. 4.206. Agents.

All owners who do not reside in Buncombe County, or in an adjacent county, who own rental property in the City of Asheville must authorize a person to serve as his or her agent for the purpose of accepting service of process under this Code. The authorization shall be effective upon the owner completing a form provided by the Housing Code Coordinator, which includes the authorized agent's name, address and telephone number. The owner shall notify the Housing Division of any changes in the information after such changes have occurred.

Sec. 4-207. Agencies.

(a) Enforcement Agency.

- (1) There is hereby created and established a division within the government of the City of Asheville to be known as the Housing Division which shall be composed of a Housing Code Coordinator, Code Enforcement Officers, and such other employees as shall be authorized by the City Manager. The Housing Division shall be a division of the city department designated by the City Manager.
- (2) Unless otherwise specified herein, the Housing Code Coordinator is hereby designated the public officer to exercise, by and through his duly appointed agents, the powers prescribed by this Code.

(b) Consulting Agency.

- (1) The Code Enforcement Officer shall have authority to request advice and assistance from any public authority or agency the Code Enforcement Officer deems appropriate in performing the duties hereunder.
- (2) Any public authority as defined under N.C. General Statutes 160A-442 or any other public agencies may report in writing to the Code Enforcement Officer any dwelling or abandoned dwelling they may encounter which is, may be, or is suspected of being unfit for human habitation under the terms of this Code.

(c) Administrative Liability. Except as may otherwise be provided by statute or local law or ordinance, no officer, agent, or employee of the City charged with the enforcement of this Code shall be personally liable for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his duties under this Code. No person who institutes or assists in the prosecution of a criminal proceeding under this Code shall be liable to damages hereunder unless he acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission.

Sec. 4-208. Reserved.

Sec. 4-209. Life Safety / Unsafe Conditions.

- (a) The Code Enforcement Officer shall determine that a dwelling is unfit for human occupancy, unsafe, and represents a threat to life or property, if any of the following conditions exist:
- (1) Lack of or inadequate potable water service;
  - (2) Presence of raw sewage or open sewer inside the dwelling, whether from broken, plugged or inoperative fixtures or pipes inside the dwelling, or migrating into the dwelling from outside;
  - (3) Improperly operating or no sanitary facilities;
  - (4) Lack of or inadequate hot water supply;
  - (5) Lack of or inadequate operating heating facilities between November 1 and March 30 of any year;
  - (6) Chimney not safe for intended use;

- (7) Lack of or unsafe electrical system;
  - (8) Nonfunctioning or missing smoke detector(s);
  - (9) Address not visible from the public street;
  - (10) Failing or failed primary structural members that threaten the stability of the dwelling and/or visible structural defects that appear to render the structural members ineffective;
  - (11) The dwelling is a physical threat due to immediate risk of collapse;
  - (12) Missing roof, or part of roof missing;
  - (13) The means of exit or escape in the event of fire or other emergency is blocked or structurally unsafe;
  - (14) An excessive internal accumulation of items or garbage that block exits, overloads the structural floor system, or creates an unhealthy condition;
  - (15) Interior wall sheathing or sheeting that is not present, or has been removed to a point where there is little or no protection from spread of fire from story to story, or from other habitable spaces to bedrooms;
  - (16) Occupancy of habitable space that does not meet below-grade occupancy standards;
  - (17) Presence of uncontained flammable or combustible liquids or gases, poisonous solids, liquids, gases, life or health threatening depletion of oxygen;
  - (18) Multiple violations of the standards set forth in Section 4-210.
- (b) The Code Enforcement Officer shall give priority enforcement to any dwelling that falls within the provisions of Section 4-209.

#### Sec. 4-210. Minimum Standards.

Without excluding other ways and means of determining that a dwelling is unfit for human habitation, the Code Enforcement Officer shall apply the minimum standards set forth in Section 4-210 of this Code in determining whether a dwelling is unfit.

##### (a) Fire Safety

- (1) Street address. Each dwelling shall bear a street address number of a color contrasting with the surface on which the number is mounted, such number to be of sufficient size to be visible from the nearest public street, but not less than two inches in height on one or two family residences and four inches in height on all other multi-family residences. Any new numbers to be installed shall be four inches in height. If the dwelling is not visible from the nearest public street, a sign or standard bearing the address number shall be placed on the principal public street access point to the dwelling, such number to meet the standards set forth herein.
- (2) Smoke detector. Every dwelling shall be provided with a smoke detector listed by Underwriters' Laboratories, Inc. or other equivalent national testing laboratory on each level

of the dwelling and in stairwells, hallways and other common areas of multiple-unit dwellings. Such detectors shall be installed in accordance with either National Fire Protection Association Standard 72, National Fire Alarm Code, Chapter 8, or the minimum protection designated in the manufacturer's instructions.

- (3) Hazardous materials. Presence of uncontained flammable or combustible liquids or gases, poisonous solids, liquids, gases, life or health threatening depletion of oxygen not in compliance with the State Building Code, or manufacturer's product installation instructions.
- (4) Fire-stopping and draft-stopping. Fire-stopping shall be maintained to cut off all concealed draft openings both horizontal and vertical and to form a fire barrier between floors and between the upper floor and the roof space.

Draft-stopping shall be maintained to cut off all concealed draft openings in floor/ceiling assemblies and in attics.

- (5) Means of egress. In multi-family houses having two or more dwelling units above the first story, every dwelling unit above the first story shall have access to at least two exit ways. One common exit is permitted provided that all of the following conditions are met:
  - a. Maximum distance of travel to reach the exit or stairs from the entrance door to any dwelling unit shall not exceed 30 feet.
  - b. Maximum number of dwelling units served by the exit shall not exceed four per floor.
  - c. Maximum gross area of the dwelling units shall not exceed 3,500 square feet per floor.
  - d. Maximum building height shall be one story above the level of exit discharge.

(b) Light and Ventilation.

- (1) Windows. Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be eight percent of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstruction structures are located less than three feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least 15 percent of the total floor area of such room.
- (2) Ventilation. Every habitable room (except kitchens with exhaust fans in good working order) shall have at least one window or skylight, which can be easily opened. The total of openable window area in every habitable room shall be equal to at least 45 percent of the minimum window area size or minimum skylight-type window size, as required, or shall have other approved, equivalent ventilation.
- (3) Mechanical Ventilation. Year-round mechanically ventilating conditioned air systems may be substituted for windows, as required herein, in rooms other than rooms used for sleeping purposes. Window type air conditioning units are not included in this exception.

- a. Bathrooms. Every bathroom with tub and/or shower shall comply with the light and ventilation requirements of Section 4-210 (b) (1) of this Code for habitable rooms in accordance with the requirements of the North Carolina Building Code when the structure was built. Electrical exhaust fans used for mechanical ventilation must be vented directly to the outside.
- b. Range hoods, if installed shall be vented to the outdoors pursuant to the North Carolina State Building Code. Vents serving range hoods shall not terminate in an attic or crawl space or other areas inside the building. Unvented range hoods must be installed per manufacturer's recommendations.
- c. Dryer vents shall be installed pursuant to the North Carolina State Building Code.

(c) Space and Sanitation

- (1) Required space. Every dwelling shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor area per additional occupant. The floor area shall be calculated on the basis of the total area of all habitable rooms. Provided, however, the requirement of this section shall not be applicable to hotels, motels and other transient dwellings.
- (2) Required space in sleeping rooms. In every dwelling, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant thereof.
- (3) Ceiling height. Habitable rooms shall have a ceiling height of not less than seven feet. Hallways, corridors, bathrooms, and water closet rooms shall have a ceiling height of not less than six feet-six inches measured to the lowest projection from the ceiling. If any room in a dwelling has a sloping ceiling, the prescribed ceiling height of the room is required in only one-half the room area. No portion of the room measuring less than five feet from the finished floor to the finished ceiling shall be included in any computation of the minimum room area.

Exception: Before the North Carolina Building Code adoption of the August 1936 edition, there was not a written Code. The ceiling heights on structures built before that time is considered acceptable, provided that the ceiling height is reasonable. Reasonable being at least six feet five inches in 50 percent of the total area. Provided no alterations have been made to the structure after the August 1936 date.

- (4) Occupancy below grade. No basement or cellar space shall be used as a habitable room or dwelling unless:
  - a. The floor and walls are resistant to leakage of underground and surface runoff water, and show no evidence of recent water leakage or accumulation; and
  - b. The total window area (or window well area) is equal to at least 22 inches in height, 20 inches in width and a window sill of not more than 44 inches in height. The window area shall not be less than eight percent of the floor space, except that in non-sleeping rooms, mechanical ventilation and electrical light may be used in place of window ventilation and light; and



- c. An easily accessible means of fire escape in addition to the basement or cellar stair is provided. Windows which are easily accessible and of sufficient size to accommodate occupants escaping a fire are acceptable.
  - (5) Sanitation Every owner of a dwelling shall provide a clean, safe and sanitary dwelling and shall be responsible for maintaining in a clean, safe and sanitary condition outbuildings and appurtenances to the extent that such outbuildings and appurtenances are regulated by this Code.
  - (6) Extermination. Every owner of a dwelling or a boarding house shall be responsible for the extermination of any insects, rodents, or other pests within the dwelling or premises. If the owner fails to provide such extermination services and evidence of insect, rodent or other pest infestation is present, extermination shall be ordered by the Code Enforcement Officer; such extermination shall be conducted by a licensed exterminator; the owner shall then provide the Code Enforcement Officer with a statement of action from the licensed exterminator. Monthly extermination treatment is the maximum that an owner shall be required to provide.
- (d) Building
- (1) Exterior
    - a. Foundation. The building foundation system shall be maintained in a safe manner and capable of supporting the load which normal use may cause to be placed thereon. Beneath the dwelling, there must be firm, reasonably dry ground ("reasonably dry" means no mud, standing water, running water or evidence of same). Mobile homes shall be set up and secured as required by the regulations of the State Building Code for Manufactured/Mobile Homes.
    - b. Structural supports. Every structural element of the dwelling shall be maintained in a structurally sound condition and show no evidence of deterioration which would render it incapable of carrying normal loads. Termites, termite damage, fire damage, absence of footings or cracked or split wood structural supports are examples of evidence of deterioration.

When additional direct support is required, piers shall be used under girders, at walls or other primary support points.
    - c. Exterior Walls.
      - (i) Every exterior wall shall be reasonably weather tight (free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain, dampness, vermin or air to the wall cavity or to the occupied spaces of the building). All siding material shall be kept in repair. "Kept in repair" includes maintenance of painted surface areas where the protective paint surface no longer protects the wood or other organic building materials from weather damage, repair of cracks or holes exceeding one-quarter inch (1/4) in width and replacement of wood or other organic components that show visual signs of rot, or are soft to the touch or otherwise show evidence of rotting.
      - (ii) Existing skirting shall be maintained free from broken or missing sections, pieces or cross members which compromise the insulation characteristics of

the skirting. Skirting shall be securely attached and sized from the ground to the lower outside perimeter of the structure. If skirting is not provided, or if existing skirting is removed, water lines and drain lines shall be insulated to prevent freezing.

- (iii) Replacement or new skirting shall be constructed of materials intended for exterior use and properly sized and mounted to prevent free access to the crawl space of the dwelling. Adequate means to gain access to the dwelling crawl space, via inside or outside, shall be furnished. Adequate means to gain access to heating or other mechanical equipment, via inside or outside, shall be furnished.
- d. Protective treatment. All exterior wood surfaces (other than decay-resistant woods, such as cedar, redwood, cypress, or pressure-treated lumber) shall be protected from the elements and decay by painting or other protective covering or treatment. Minimal chipping or peeling of surfaces not directly exposed to the elements and not reasonably expected to contribute to decay of wood surfaces is not required to be treated. All siding shall be weather-resistant and watertight. All masonry joints shall be sufficiently tuck pointed to insure water and air tightness. "Sufficiently tuck pointed" means that mortar shall not be removable by finger pressure.
- e. Roofs. Roofs shall be structurally sound, and maintained in a safe manner and have no defects which might admit rain or cause dampness in the walls or interior portion of the dwelling. The following may constitute evidence of defects: Missing shingles; Flashing(s) missing; roof deflection deeper than 1/6 of the depth of the rafter and/or rafters cracked; damage to ceilings (ceiling plaster loose or falling, brown spots, etc.), sheet rock hanging, etc. in rooms below roof; or fire damage.  
  
No more than two layers of roofing materials (shingles, shakes, roofing) shall be permitted unless compliant with the North Carolina Building Code under which it was installed or certified as structurally sound by an architect or engineer registered in North Carolina.
- f. Attics. All attics shall be adequately ventilated. Insulation rated at least R-19 (or minimum thickness of six inches) and consisting of rock wool, fiberglass, or other material exhibiting fire-resistance and insulation capacities equal to, or greater than, rock wool or fiberglass shall be required in the accessible ceiling or attic of the highest story containing habitable rooms in all dwellings.

Exception: Knob & tube wiring shall not be covered with insulation. The owner of any dwelling must produce an insulation certification card or other identifying marks as described in the North Carolina State Building Code before that owner can obtain a Housing Certificate.

- (2) Interior surface: Every floor, interior wall and ceiling shall be substantially vermin-proof, shall be kept in sound condition and good repair and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon. Interior finish shall be free of excessive holes and cracks. No cardboard or other highly combustible or improper wall finish or ceiling finish shall be allowed. No rotted, fire-damaged, or loose flooring shall be allowed. All floors shall be level enough so as not to present a tripping hazard. Every bathroom floor surface and kitchen floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be readily kept in clean and sanitary condition.

(3) Windows and window assemblies.

- a. Each window shall be weather tight, watertight and rodent proof, and shall be kept in sound working condition and good repair. If daylight can be seen around the inside or outside perimeter of the window casing, that window does not meet this standard. Every openable window shall be equipped with an effective locking mechanism or other mechanism that functions as a lock.
- b. Each window sash shall be fully supplied with glass window panes or an approved substitute which are without open cracks or holes. Wood, cardboard or polyethylene or other plastic film are not approved substitutes. A window pane with a crack or hole must be replaced or the crack or hole sealed with clear silicone seal. A broken window (pieces missing or exposed glass edge) must be replaced.
- c. Each window sash shall be properly fitted and weather tight within the window frame. If daylight can be seen from around the inside or outside perimeter of the window sash, that window does not meet this standard.
- d. Each window required for ventilation for habitable rooms shall be capable of being easily opened or closed and secured in position by window hardware.
- e. Security bars. When security bars exist, one grill in each room used for sleeping should be equipped with a release device designed for emergency escape. Occupancies below grade, windows fitted with security grills intended for emergency escape should have a vertical measurement of no more than 44 inches from the sill or fixed portion of the grill to the finished floor. Exception: If a room used for sleeping has a door leading directly to the outside of the building at or to grade level.
- f. Screens. In order to provide for required ventilation, dwelling units which do not have central air conditioning systems shall have fitted screens in good repair on all operable windows. One window or skylight facing directly outdoors must be provided in all habitable rooms and must have a screen. Screens shall provide a continuous barrier to insects. Warning: Screens will not stop a child from falling out a window; a child shall be kept away from an open window.

(4) Doors

- a. Every exterior door, basement or cellar door and hatchway shall be substantially weather tight, watertight, and rodent proof, and shall be kept in sound working condition and good repair. "Good repair" includes no delamination or splitting of wood doors.
- b. Every exterior door to a dwelling shall be provided with properly-installed hardware that is maintained to insure reasonable ease of operation to open, close or secure in an open or closed position, as intended by the manufacturer of the door and the attached hardware. Properly-installed hardware shall consist of knob, bib and operating lock with sufficient strength to prevent unauthorized entry in all situations short of disassembly, force or use of a key or pick. All exterior doors shall be capable of being locked from the inside and outside in a manner that will provide for the safety and security of the occupant(s).

- c. Exterior door frames shall be properly maintained and shall be equipped with weather-stripping and thresholds as required to be substantially weather tight, watertight, and rodent and insect restrictive when the door is in a closed position. If daylight can be seen from inside around the inner perimeter of an exterior door frame that door frame does not meet this standard.
- d. Exterior door jambs, stops, headers and moldings shall be securely attached to the dwelling, maintained in good condition without splitting or deterioration that would minimize the strength and security of the door in a closed position. If daylight can be seen from inside around the outer perimeter of an exterior door frame that door frame does not meet this standard.
- e. Interior door hardware. Every interior door shall be provided with proper hardware, securely attached and maintained in good condition. Hasp lock assemblies are not permitted on any side of the door of habitable rooms.
- f. The use of double cylinder locks on common area egress doors for multi-family rental units is prohibited.

(5) Stairs, Porches and Appurtenances

- a. Every inside and outside stair, porch and any appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair. Stairs and steps shall be free of holes, grooves and/or cracks large enough to constitute accident hazards. Risers shall be reasonably uniform in height. Stair coverings shall be securely mounted and shall not interfere with safe use of the stairs.
- b. Protective railings. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition. Protective railings and guards are required for stairs and stairwells exceeding 4 risers high and shall be required for every porch, terrace or entrance platform located at least thirty (30) inches above the adjacent finished grade or floor. Railings and guards shall be in accordance with the requirements of the North Carolina State Building Code when the structure was built. New railings and guards shall comply with the current North Carolina State Building Code. Stairs located in or leading to an unheated and uninhabitable attic or basement must be sturdy and have at least one handrail.

(6) Outbuildings. Garages, storage buildings and all other accessory structures shall be structurally sound. When the condition of plumbing, heating, structural or electrical facilities present an imminent danger to occupants, or to the public, if such outbuilding is accessible to the public, those facilities shall be made safe in a manner consistent with this Code.

(e) Electrical

- (1) Service. Adequate electric service must be provided to the dwelling. "Adequate" means a minimum of 60 ampere service with no more than five two-wire branch circuits connected and a total connected load of less than ten kilowatts. If a service has six or more two-wire branch circuits, 100 ampere service at a minimum must be provided. If the connected electrical load exceeds the capacity of a 100 ampere service, a service of sufficient ampere capacity to safely bear the connected electrical load shall be furnished. "Edison base" fuses

shall not be permitted as components of any electrical service, and no more than one two-wire branch circuit shall be connected to any fuse, circuit breaker or other approved over-current protection device. Drop cords from a neighboring source, generator or similar source are not "adequate" for purposes of this Code.

Every new or additional electrical outlet and fixture required by the Code shall be installed, maintained and connected to a source of electric power in accordance with the provisions of the North Carolina Building Code.

- (2) Wiring. All outlets, switches, wiring and light fixtures shall be safe and operable. Any new outlets shall be installed to the standards of the North Carolina State Building Code. Appliances such as refrigerators, washing machines, dishwashers, microwaves and air conditioners shall be protected by a grounded receptacle. An ungrounded ground fault circuit interrupter (GFCI) may be installed pursuant to the National Electrical Code (NEC); however these are not recommended for refrigerators. Outlets within 6 feet of a source of water shall be protected by a grounded outlet or GFCI. An arc-fault interrupter is recommended, but not required, for extensions of bedroom circuits. No extension cords shall be spliced or used as fixed wiring or permanently installed to service appliances or fixtures. Extension cords shall be used only as temporary extensions for portable equipment not routinely used in an area where permanently wired receptacles are not available or installed. Cords shall not be run through openings in walls, ceilings, or doorways; attached or fixed permanently to any surface; run under carpets or floorings; or plugged into a power strip. Multi-outlet assemblies (power strips) shall be equipped with fuse or circuit breaker and used in accordance with the limitation of the product label of the testing agency. Electrical odor, flickering lights, visibly frayed wiring, broken switch plates or outlet plates or failure of circuit-tester check shall be evidence of an unsafe electrical system.
- (3) Light Fixtures and Outlets.
- a. Halls and stairways. Every hall and stairway of every dwelling shall be lighted, including exterior stairways and stairways in halls and public space.
  - b. Every hall, water closet compartment, bathroom, laundry room or furnace room shall contain at least one ceiling-mounted or wall-mounted fixture outlet. For purposes of this section a laundry closet shall not be considered a laundry room.
  - c. Bedrooms shall have, in addition at least one wall switch controlled lighting outlet or ceiling light fixture or permanent fixture controlled by a pull chain.
  - d. In bathrooms, the lighting outlet shall be controlled by a wall switch or fixture pull chain. In addition to the lighting outlet in every bathroom and laundry room, there shall be provided at least one receptacle outlet. Any new or replacement bathroom receptacle outlet shall have ground fault circuit interrupter protection.
  - e. Every habitable room or space shall contain at least two separate and remote duplex receptacle outlets.
  - f. In kitchens, three separate, remote and accessible receptacle outlets shall be provided, and a wall or ceiling light outlet controlled by a wall switch or fixture pull-chain shall be provided. An outlet dedicated to powering an appliance and/or not easily accessible because it is blocked by an appliance, shall not be counted as a separate outlet. In kitchens with less than six linear feet of counter top, two of the three required outlets may be within the counter top space.

Exception: When an existing kitchen area is less than 70 square feet of floor area, two separate, remote and accessible receptacle outlets shall be provided, and a wall or ceiling lighting outlet controlled by a wall switch or fixture pull-chain shall be provided.

(f) Plumbing

- (1) Sanitary. Every dwelling shall be furnished with a potable water supply system. "Potable water supply" means direct connection to a well, to a public water utility or equivalent water service delivery system, and does not include water delivered through a hose or via containers. Every dwelling shall contain not less than a kitchen sink, lavatory, tub or shower, and a water closet all in good working condition and properly connected to a functioning water and sewer system. Every plumbing fixture and water and waste pipe shall be maintained in good sanitary working condition. "Properly connected" means connected with approved plumbing materials (no radiator hose, duct tape, etc.). Any new, additional or repair plumbing must meet the current requirements of the North Carolina Building Code. Provided, however, that the kitchen sink standards enumerated herein shall not apply to hotels, motels and other transient places unless kitchen sinks are otherwise required.
- (2) Location of sanitary facilities. All required plumbing fixtures shall be located within the dwelling and be accessible to the occupants of the same. The water closet, tub or shower and lavatory shall be located in a room or adjoining rooms affording privacy to the user. Required bathrooms shall be accessible from habitable rooms, hallways, corridors or other protected or enclosed areas.
- (3) Hot and cold water supply. Every dwelling shall have connected to the kitchen sink, lavatory, and tub or shower an adequate supply of both cold and hot water. All water shall be supplied through a functioning distribution system connected to a potable water supply.
- (4) Water heating. Every dwelling shall have water heating facilities which appear to be properly installed, appear to be in safe and good working condition, respond to normal operating controls, and capable of heating water to such a temperature so as to permit hot water to be drawn consecutively (that is, at one tap after the other, and not simultaneously) at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than 116 degrees F. Such water heating facilities shall be capable of meeting the requirements of this subsection when the dwelling's heating facilities required under the provisions of the Code are not in operation. Apartment houses may use a centralized water heating facility capable of delivering an amount of hot water in the quantity and at the temperature described above.

Water heaters shall be equipped with approved relief valves, which are piped to a point not more than six inches above the floor. The pipe material for the relief valve shall be properly connected and rated for interior water service lines. The discharge end of the extension tube may not be threaded.

- (5) Bathroom access. Bathroom access shall be provided in a manner that does not require an occupant to leave the dwelling to gain access. Privacy of bathrooms shall be afforded by doors complete with privacy hardware intended by the manufacturer for that purpose.
- (6) Water closet, lavatory and bath facilities for boarding houses. At least one flush water closet, lavatory basin, and bathtub or shower, properly connected to a water and sewer system and in good working condition, shall be supplied for each four rooms within a rooming house wherever such facilities are shared. All such facilities shall be located on the

floor they serve within the dwelling so as to be private and reasonably accessible from a common hall or passageway to all persons sharing such facilities

(g) Mechanical

(1) Heat. Every dwelling shall have heating facilities which appear to be properly installed, appear to be in safe and good working condition, respond to normal operating controls, and capable of maintaining a room temperature of 65 degrees in all habitable rooms. Each heating system shall have at least one readily-adjustable control for regulation of living space temperature in each dwelling unit. Radiator control knobs in good working order shall be regarded as a readily-adjustable control.

- a. Where a central heating system is not provided for a dwelling, the dwelling shall be provided with properly installed baseboard electric heat, properly installed and properly vented wood or fossil fuel heater(s), or unvented natural gas heaters having oxygen depletion sensors listed for residential use by UL, ETL, or other North Carolina recognized testing laboratory and installed in strict accordance with the manufacturer's instructions.
- b. The following heating devices do not meet the requirements of subsection (g) (1) a. of this section: (i) portable electric heating units; and (ii) un-vented fuel-burning heaters.
- c. The use of unvented fuel-burning heaters is prohibited in any bedroom.
- d. Heat appliance clearances maintained at 36 inches from combustible materials and/or surfaces, except that clearances may be reduced as provided in National Fire Protection Association's Standard 211, "Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances," 1992 edition.
- e. Central warm air heating systems for multi-family units have not been allowed since 1991. The furnaces for shared systems may be repaired or cleaned, however, may not be reconfigured or replaced unless the entire system is made to comply with the present North Carolina State Building Code. This means that ventilation air may not be recirculated from one dwelling unit to another. The owner and heating contractor will need to address the entire scope of work in the permitted work including but not limited to fire stopping, damper systems when necessary; fire-rating mechanical rooms if necessary and allowing proper access to mechanical areas.

(2) Chimneys.

- a. Chimneys must appear to be safe for use as specified and intended. "Specified" means use in connection with specific heating appliances or systems, or limitations of such use.

"Intended" means use in connection with combustion of fuel, for which the following minimum chimney standards apply: flue liner intact; chimney mortar and bricks secure; flue unobstructed; fireplace firebricks intact; stove piping placed and secured with clearances as follows:

- (i) Minimum 12-inch brick clearance separation from combustibles; or
- (ii) Minimum nine-inch air separation for insulated listed stove-piping; or

- (iii) Minimum one-inch air clearance surrounded by six-inch glass fiber insulation and ventilated thimble assembly; or
- (iv) Minimum two-inch air separation for insulated listed stove-piping with one-inch air space between inner and outer chimney components; and as otherwise described in National Fire Protection Association's Standard 211, "Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances," 1992 edition.

b. Chimneys that do not meet these standards shall be either repaired or sealed.

- (3) Cooking equipment. All cooking equipment and facilities shall be installed in an approved manner and shall be maintained in safe working condition. Portable cooking equipment employing flame is prohibited as a substitute for approved cooking equipment. Portable cooking equipment is prohibited outside the kitchen area of a boarding or rooming house.
- (4) Master meters. All duplex and multi-family dwellings must conform to the City's Unified Development Ordinance. If permitted in 1977 or later, as required by N.C. Gen. Stat. Sec. 143-151.42, each individual dwelling must have separate electric and gas utility meter services.
- (h) General. Violation(s) of State Building Code Regulations for Existing Multi-Family Dwellings. A dwelling that is not in compliance with the State Building Code shall be considered unfit and ineligible for a Housing Certificate under this Code unless the owner has been granted a building permit for work that would bring the structure into compliance with the State Building Code. Expiration of the permit without completion of such work shall result in revocation of the Housing Certificate issued for such dwelling

#### Sec. 4-211. Alternate Means.

- (a) The Housing Code Coordinator may authorize an alternate means of meeting the requirements of this Code only under the following circumstances as established by the owner(s):
  - (1) The condition for which the alternate means is sought is not one of the conditions set forth in Section 4-209 of this Code.
  - (2) The condition for which the alternate means is sought is an element of the fundamental and original construction of the dwelling. "Fundamental and original construction" includes foundation dimensions, ceiling height, organization of habitable space, and any other condition governed by the original structure of the dwelling; and
  - (3) There exists a demonstrable alternate means of meeting the intent of this Code.
- (b) In the event that the Code Enforcement Officer withholds approval of one or more plumbing, electrical, mechanical, structural or fire safety components, the Code Enforcement Officer may accept approval of such components without further corrections upon receipt of a report from an appropriately licensed contractor, architect or engineer certified in North Carolina, as specified by the Code Enforcement Officer in writing.

#### Sec. 4-212. Reserved.

#### Sec. 4-213. Duties of Tenants.



This Code is not intended to interfere with or abrogate the duties imposed on tenants of rental property by North Carolina General Statutes, Chapter 42-43, or with lawful written agreements between property owners and tenants.

#### Sec. 4-214. Responsibility of Owner.

The owner remains responsible for complying with the provisions of this Code, even though:

- (1) An obligation is also imposed on the occupants.
- (2) The owner has, by agreement, imposed on the occupant the duty of complying with this Code.
- (3) In cases where a part of a dwelling unit or dwelling is owned by an association of owners and the balance of such dwelling unit or dwelling is owned by an individual owner, responsibility for compliance lies with the owner of that part of the dwelling unit or dwelling not in compliance with this Code.

#### Sec. 4-215. Third Party Inspector Program.

- (a) The Housing Code Coordinator shall develop standards and requirements for certification of third party inspectors as qualified to conduct a housing inspection under this Code, which standards and requirements shall be approved by the Director of the City of Asheville Building Safety Department. Such standards and requirements shall include, but not be limited to, training and education, insurance and bonding, assumption of liability and continuing education standards. A housing inspection conducted by such an inspector, who shall be an independent contractor and not a City employee, shall be treated as if conducted by a Code Enforcement Officer for purposes of enforcement of this Code.
- (b) The results of an inspection conducted under authority of this section shall be turned over to the Code Enforcement Officer in written form within five working days of completion of such inspection. At the time of receipt of the foregoing report, the Code Enforcement Officer shall proceed to enforce the provisions of this Code.
- (c) The Housing Code Coordinator shall maintain a listing of approved third-party inspectors.

#### Sec. 4-216. Administration of the Code

- (a) Powers of the Code Enforcement Officer: The Housing Code Coordinator shall have such powers as may be necessary, lawful, or convenient to carry out and effectuate the purpose and provisions of this Code, including without limiting the generality of the foregoing the following powers:
  - (1) To investigate the dwelling conditions in the City in order to determine which dwellings therein are unfit for human habitation.
  - (2) To administer oaths, affirmations, examine witnesses and receive evidence.
  - (3) To enter upon premises for the purpose of making inspections in a manner that will cause the least possible inconvenience to the persons in possession.
  - (4) To appoint and fix the duties, as provided in this Code, of such officers, agents, and employees as he deems necessary to carry out the purpose of this Code.

(b) Inspections.

- (1) It shall be the duty of the Code Enforcement Officer to periodically examine the dwellings located in the City for the purpose of determining the fitness of dwellings for human habitation, and for the enforcement and administration of this Code.

In exercising this power, the Code Enforcement Officer shall have a right to enter on any premises within the City at all reasonable hours (between 9:00 a.m. and 5:00 p.m., Monday through Friday and at the convenience of the occupant) for the purpose of inspection or other enforcement action, upon presentation of proper credentials. Upon refusal after proper notice, the Code Enforcement Officer shall have the right to inspect pursuant to Article 4A of Chapter 15 of the North Carolina General Statutes, as amended.

- (2) If, during the course of an inspection, the Code Enforcement Officer finds evidence of construction in progress that would require a permit (or permits) pursuant to N. C. Gen. Stat. sec. 160A-417, the owner shall produce evidence that such permit(s) have been obtained prior to issuance of any Housing Certificate.

- (3) It shall be the responsibility of the owner to relocate any moveable obstructions (furniture, boxes, appliances and construction materials, for example) that would otherwise interfere with a complete Housing Certificate inspection. The Code Enforcement Officer shall not be responsible for failure to detect violations of this Code when such violations are concealed behind, under or above walls, floors, ceilings or other fixed components of the dwelling that are not readily accessible. Inspections are primarily visual in nature and not technically exhaustive.

- (4) Housing Authority.

- a. The Asheville Housing Authority (“Authority”) shall be authorized to provide inspections under this Code in dwelling units owned or regulated by the Authority. It shall be the responsibility of the Authority to ensure that all inspectors are properly trained to conduct inspections under the City of Asheville Housing Code on a report form approved by the Housing Code Coordinator. The Authority must maintain a file on all inspections and notify the Housing Code Coordinator in writing when inspections are completed. Should evidence show that inspections are not performed in accordance with this Code, then authorization may be withdrawn by the Housing Code Coordinator.

- b. All complaints received on dwelling units owned or regulated by the Authority shall be processed pursuant to Section 4-217 of the Code.

(c) Housing Certificate/Life Safety Letter of Compliance

- (1) For rental dwellings, whether occupied or vacant, the owner is required to obtain a Housing Certificate as follows:

- a. Single-family dwellings.

- b. Buildings containing up to five dwelling units; at least one unit must be inspected.

- c. Buildings containing six or more dwelling units; an inspection shall take place in 20 percent of the dwelling units in each building. Provided, however, multi-family

complexes with a verifiable maintenance program, a Housing Certificate inspection shall take place in 10 percent of the dwelling units in each building.

Selection of units for inspection shall be random in nature and at the discretion of the Code Enforcement Officer. In a required inspection, if an average of 4 or more violations of the standards set forth in Section 4-210 of this Code is present in each dwelling unit, an additional 20% of the dwelling units in each building shall be inspected.

- d. Nonconformity. All dwellings not conforming, as of the effective date of this Code, to the Housing Certificate requirements of the Housing Code, adopted in Article VII of Chapter 4 of the Code of Ordinances on November 30, 1993, one hundred percent (100%) of the dwelling units must be inspected under the provisions of this Code.
- e. Conformity. All dwellings conforming, as of the effective date of this Code, to the Housing Certificate requirements of the Housing Code, adopted in Article VII of Chapter 4 of the Code of Ordinances on November 30, 1993, except as herein provided, shall be deemed conforming to the terms of this Code.

Additionally, all dwellings having received a Certificate of Occupancy, on or after July 1, 1994, except as herein provided, shall be deemed conforming to the terms of this Code.

- f. Annexation. Dwellings annexed into the City shall obtain a Housing Certificate in accordance with this Code within five (5) years of annexation, or upon a change of occupancy, whichever occurs first.
- g. Duration of Housing Certificate. Any Housing Certificate deemed conforming to the terms of this section, or any Housing Certificate issued pursuant to this Code, shall apply to all dwelling units within the building inspected. The Housing Certificate shall remain valid until there is a failure to maintain the dwelling in compliance with the terms of this Code. Provided, however, if an average of four (4) or more violations of the standards set forth in Section 4-210 of this Code are identified, the Code Enforcement Officer may invalidate the Housing Certificate. If invalidated, a new Housing Certificate shall be required. Failure to respond to inspection scheduling efforts on the part of the Code Enforcement Officer shall be a violation of this Code.

- (2) Owner Occupied Dwellings. Upon change of occupancy, it shall be a violation of this Code to occupy the property without a Life Safety Report addressing the conditions set forth in Section 4-209 of this Code. If the Life Safety Report identifies a violation of any of the standards set forth in Section 4-209 of this Code, it shall be a violation of this Code to occupy the property without a Life Safety Letter of Compliance from the Code Enforcement Officer stating that there is compliance with Section 4-209. This subsection (2) shall apply to all owner occupied dwellings except:

- a. If the dwelling conforms as of the effective date of this Code, with the Housing Certificate requirements of the Housing Code, adopted in Article VII of Chapter 4 of the Code of Ordinances on November 30, 1993; or
- b. If the dwelling received a Certificate of Occupancy, on or after July 1, 1994; or

- c. If the dwelling previously received a Housing Certificate or Life Safety Letter of Compliance under the terms of this Code.

(3) General.

- a. When a Housing Certificate has been requested, the City's inspection form must be completed and re-inspection must be scheduled by the owner within 90 days of the initial inspection. The re-inspection shall consist primarily of a recheck of Code violations listed on the initial inspection report. Any additional violations noted at the time of the re-inspection, will become part of the inspection record and shared with the owner. Additional "Life Safety/Unsafe Conditions" shall be required to be corrected prior to issuance of a Housing Certificate. Less serious issues shall be recommended for repair.
  - b. The Code Enforcement Officer certifies to the findings of the inspection only upon the date of issue and not beyond. A disclaimer to this effect shall appear on all Housing Certificates and Life Safety Letters of Compliance issued.
  - c. No Housing Certificate, Life Safety Letter of Compliance, or Temporary Housing Certificate shall be issued if electrical service and/or water service is not present at the time of inspection.
  - d. Once a Housing Certificate or Life Safety Letter of Compliance has been issued, no additional inspections, certificates or letters will be required at any future change of occupancy as long as the owner maintains the property in compliance with the standards of this Code.
  - e. Nothing herein shall prevent either the buyer or seller from requesting a Housing Certificate inspection.
  - f. Violations of Section 7-5-2 (Zoning Permits), of the City's Unified Development Ordinance as it may be amended from time to time, shall be corrected prior to occupancy.
- (d) Temporary Housing Certificate. Where no violation as described in Section 4-209 of this Code is identified, the Code Enforcement Officer may issue a Temporary Housing Certificate to an owner contingent upon completion of violations identified in the inspection report. The owner must agree to vacate the dwelling immediately upon failure to complete the repairs within the time period specified in the Temporary Certificate. Upon expiration of the Temporary Certificate, the dwelling shall be deemed unfit, and the Code Enforcement Officer may proceed to enforce this Code. Temporary Housing Certificates can be renewed or extended upon request for renewal and must be approved by the Code Enforcement Officer.
- (e) Fees. The Housing Code Division will charge the owner such inspection fees as may be established from time to time by the City Council as set forth in the City's Fees and Charges Manual.
- (f) Reports. Inspection findings will be recorded on standardized report forms and provided to the owner. Such standardized reports shall include specific references to sections of the Code when any violations are recorded. The reports shall contain notice of any deficiencies under the Code and inform the owner of any deadline to remedy the deficiencies. It is the responsibility of the owner(s) to immediately advise the occupants of any unsafe conditions as set forth under Section 4-209 of the Code.

Sec. 4-217. Enforcement.

(a) Issuance of Complaint.

- (1) Whenever a petition or complaint is filed with the Code Enforcement Officer by a public authority, or by at least five residents of the City charging that any dwelling is unfit for human habitation, or whenever it appears to the Code Enforcement Officer, on his own motion, that any dwelling is unfit for human habitation, the Code Enforcement Officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint. The Complaint shall list the violations of this Code and contain a notice that a hearing will be held before the Housing Code Coordinator, at a place within the City at a time fixed, not less than 10 days nor more than 30 days after the serving of said Complaint. The notice shall also notify the owner and parties in interest that they have the right to file an answer to the Complaint and to appear in person or otherwise, and give testimony at the place and time fixed in the Complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Housing Code Coordinator. All Complaints and Notices of Hearing issued by the Code Enforcement Officer may be filed in the notice of lis pendens in the Office of the Clerk of Superior Court for Buncombe County.
- (2) The Code Enforcement Officer may, prior to the issuance of a Complaint, serve the property owner or property owner's agent with a violation notice giving the property owner a designated date to correct the violation(s).

(b) Findings of Fact and Order. If, after such notice and hearing, the Housing Code Coordinator/ designee determines that the dwelling under consideration is unsafe or unfit for human habitation, according to the standards of this Code, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. All orders issued by the Housing Code Coordinator may be filed in the notice of lis pendens in the Office of the Clerk of Superior Court of Buncombe County.

- (1) Deteriorated. If the dwelling is found to be deteriorated as defined in this Code, the Housing Code Coordinator shall require the owner to repair, alter, or improve such dwelling so as to bring it into compliance with this Code within a designated date of the service of the order upon the owner. Such order may also direct and require the owner to vacate and close the dwelling as a human habitation. Where the Housing Code Coordinator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be necessary.
- (2) Dilapidated. If the dwelling is found to be dilapidated as defined in this Code, the Housing Code Coordinator may require the owner to remove or demolish such dwelling within a designated date of the service of the order. Where the Housing Code Coordinator finds that there is imminent danger to life or other property, he may condemn and/or order that corrective action be taken in such lesser period as may be necessary. Such order will not bar the owner from making such repairs as are necessary to bring the dwelling into compliance with this Code within the corrective action period imposed by such order.

(c) Service of Complaints and Orders. Complaints and Orders issued by the Code Enforcement Officer pursuant to this Code shall be served upon persons either personally or by registered or certified mail, and, in conjunction therewith, may be served by regular mail. When the manner of service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is returned, but the regular mail is not returned by the post office within ten days after mailing, service shall be deemed sufficient. The person mailing such Complaint or Order by regular mail shall certify

that fact and the date thereof, and such certificate shall be deemed conclusive in the absence of fraud. If the identities of any owners or the whereabouts of such persons are unknown and the same cannot be ascertained by the Code Enforcement Officer, in the exercise of reasonable diligence, and the Code Enforcement Officer makes an affidavit to that effect, then the serving of such Complaint or Order upon the unknown owners or other persons may be made by publication in a newspaper having general circulation in the City at least once no later than the time at which personal service would be required under this article. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. Failure on the part of any owner or party in interest to receive or have served upon him any complaint, notice, or order herein provided for shall not affect or invalidate the proceedings with respect to any other owner or party in interest or any other person, firm, or corporation.

(d) Prior Orders.

(1) Prior orders or ordinances not directing demolition. If City Council has adopted an ordinance, or the Housing Code Coordinator has issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in section 4-217(b)(1), and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order, then if the City Council shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the city in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this state, then in such circumstances, the City Council may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. That the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding 50 percent of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. That the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding 50 percent of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.
- c. That the ordinance shall be recorded in the Office of the Register of Deeds for Buncombe County and indexed in the name of the property owner in the grantor index. That failure to comply with the ordinance shall authorize the director to effectuate the purpose of the ordinance.

(2) Historic district. Notwithstanding any other provision of law, if the dwelling is located in a historic district of the City and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with N.C. Gen. Stat. sec. 160A-400.14(a).

(e) Action Upon Failure to Comply With Order.

- (1) If the owner of a dwelling fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the Housing Code Coordinator may cause the dwelling to be repaired, altered, or improved, or to be vacated and closed; the Housing Code Coordinator may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words:

"This dwelling is unfit for human habitation; the use or occupation of this dwelling for human habitation is prohibited and unlawful."

Occupation of a dwelling so posted shall constitute a misdemeanor.

- (2) If the owner fails to comply with an order to remove or demolish the dwelling, the Housing Code Coordinator may cause such dwelling to be removed or demolished.
- (3) The order of the Housing Code Coordinator to repair, alter, improve, vacate and close or remove and demolish shall not be exercised by the City until City Council shall have by ordinance ordered the Housing Code Coordinator to proceed to effectuate the purpose of this Code with respect to the particular property or properties which the Housing Code Coordinator shall have found to be unfit for human habitation or unsafe and which property or properties shall be described in the ordinance. No such ordinances shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity to this Code. Such ordinance shall be recorded in the Office of the Register of Deeds for Buncombe County and shall be indexed in the name of the property owner in the grantor index.

Provided, however, nothing in this Code shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

- (4) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Housing Code Coordinator shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the North Carolina General Statutes. If the dwelling is removed or demolished by the Housing Code Coordinator, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Buncombe County Superior Court by the Housing Code Coordinator, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court.
- (5) If any occupant fails to comply with an order to vacate a dwelling, the Housing Code Coordinator may file a civil action in the name of the City to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such a dwelling. The Clerk of the Buncombe County Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in N. C. Gen. Stat. sec. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Housing Code Coordinator produces a certified copy of an ordinance adopted by the City pursuant to subsection (d)(3) of this section authorizing the

Housing Code Coordinator to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under N. C. Gen. Stat. sec. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in N. C. Gen. Stat. sec. 7A-228, and the execution of such judgment may be stayed as provided in N. C. Gen. Stat. sec. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this section unless such occupant has been served with notice at least 30 days before the filing of the summary ejectment proceeding that the City has ordered the Housing Code Coordinator to proceed to exercise his duties under this section to vacate and close or remove and demolish the dwelling.

- (f) **Notices to Organizations.** Whenever a determination is made pursuant to this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this Code, notice of the order shall be given by first-class mail to any organization, involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the Housing Code Coordinator, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The Housing Code Coordinator shall certify the mailing of the notice, and the certification shall be conclusive in the absence of fraud. Except as herein stated, only an organization that has filed a written request for such notice shall receive such notice. The sole remedy for failure to notify shall be an order requiring the Housing Code Coordinator to wait 45 days before causing removal or demolition.
- (g) **Displacement.** In enforcing the provisions of this Code, the Housing Code Coordinator shall make every effort to prevent unnecessary displacement of occupants, and to the extent possible, discuss with the affordable housing agencies and other organizations on any alternate housing needs.
- (h) **Determination of Value.** The Code Enforcement Officer is hereby authorized to fix the reasonable value of any dwelling or abandoned dwelling for the purpose of this Code. Such value shall be binding unless the owner provides for delivery of a written appraisal as to the reasonable value of the dwelling prepared by a North Carolina state-certified residential appraiser within 30 days after receipt of an order from the Housing Code Coordinator.
- (i) **Equitable Enforcement.** In case any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this Code or any order or decision of the Housing Code Coordinator or Board made pursuant to this Code, the Housing Code Coordinator may initiate any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, or use, to restrain, correct, or abate such violation and to prevent the occupancy of the dwelling.
- (j) **Criminal Enforcement.** A violation of any provision of this Code shall constitute a misdemeanor, and the violator may be fined up to \$500.00 or up to 30 days imprisonment or both for each offense, in the discretion of the court.
- (k) **Civil Enforcement.**
  - (1) **Failure to Comply with Orders.** An owner who fails to comply with an order to repair or to improve, vacate, close or demolish any dwelling determined unfit for human habitation pursuant to the provisions contained in this Code, or who permits the occupancy or re-occupancy of an unsafe or unfit dwelling in violation of this Code shall be subject to a civil



penalty of \$250.00 for the first day following the expiration of an order to repair or improve, vacate or close any occupied dwelling or following a determination that an unfit dwelling has been reoccupied in violation of this Code. In each instance, a penalty of \$50.00 per day shall be imposed for each subsequent day that such failure to comply continues. If a person fails to pay the civil penalty within ten days after being notified of the amount due, the City may recover the penalty together with all costs by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt.

- (2) Failure to Obtain a Housing Certificate. An owner who does not have a Housing Certificate on the effective date of this Code, but who was required to have a Housing Certificate under the terms of the Housing Code adopted in Article VII of Chapter 4 of the Code of Ordinances on November 30, 1993, or does not have a Housing Certificate as required under the terms of this Code, shall be assessed a penalty of \$20.00 per month, per unit for which a Housing Certificate has not been obtained. This penalty shall be paid prior to the issuance of a Housing Certificate. Additionally, effective January 1, 2004, the failure to obtain a Housing Certificate shall subject the owner to an increased penalty of \$150.00 per month, per unit, for which a Housing Certificate has not been obtained; provided, however, the maximum penalty hereunder shall not exceed Six Hundred Dollars (\$600.00) per unit.
- (l) Response Time. The City Manager shall maintain statistics and monitor response times to ensure that complaints are responded to within a reasonable amount of time.

#### Sec. 4-218. One-Step Service Process.

- (a) In lieu of the procedure set forth in Section 4-217 of this Code, the Code Enforcement Officer may proceed as set forth in this section whenever it appears to the Code Enforcement Officer that any dwelling is extremely dilapidated and meets the following conditions:
  - (1) It has been determined by the Code Enforcement Officer to be either:
    - a. At least 50 percent destroyed by fire or other casualty; or
    - b. Unable to be repaired, altered or improved to comply with all the standards established by this Code at a cost of less than 75 percent of its value;
  - (2) It is not occupied; and
  - (3) For at least one year, there has been no record of electrical service as required by section 4-210(3) of this Code and/or no record or evidence of a potable water supply as required by Section 4-210(1)(a) of this Code, or substantially similar conditions that indicate that the dwelling has not been lawfully occupied.
- (b) The Code Enforcement Officer may serve the property owner and parties in interest with a notice of violation of the Housing Code and set a date not less than 30 days from the date of service of the notice within which the property owner shall either commence rehabilitation so as to bring the dwelling into compliance with the Housing Code or commence demolition proceedings. The notice shall also inform the property owner that if corrections or demolition proceedings are not commenced within the time period specified, the Code Enforcement Officer shall, without further notice or further request of the governing body, cause the demolition of the dwelling and place a lien against the property.
- (c) Written Objection. If the property owner or party in interest submits written objection to the Code Enforcement Officer proceeding against the dwelling within the time period specified in the notice of

violation, the Code Enforcement Officer shall cease any further efforts at compliance under this section but may proceed in accordance with other provisions of this article. If the property owner or party in interest does not submit written objection to the Code Enforcement Officer proceeding against the dwelling within the time period specified in the notice of violation, the Code Enforcement Officer shall document that the conditions set forth in subsection (1) exist, enter an order to that effect, and cause the dwelling to be demolished. The Code Enforcement Officer shall be under no further obligation to notify or serve the property owner or party in interest where there is no written objection. The amount of the cost of demolition by the Code Enforcement Officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the North Carolina General Statutes.

- (d) Civil Actions. Civil actions against the City of Asheville for proceeding under this subsection must be filed within nine months from the date the violation notice is served upon the aggrieved party.

#### Sec. 4-219. Appeal Procedures.

- (a) To Housing Code Coordinator. Any owner may file a written appeal within ten days after issuance of the Code Enforcement Officer's report, with the Housing Code Coordinator. The Housing Code Coordinator is hereby given authority to rule on any dispute arising out of the interpretation of this Code by the Code Enforcement Officer. The Housing Code Coordinator will affirm, reverse, or modify the ruling of the Code Enforcement Officer. Appeals of Decisions or Orders of the Housing Code Coordinator shall be made to the Director.
- (b) To Board of Adjustment. A Housing Appeals Board is hereby created to which appeals on the record may be taken by an owner or other party in interest from any decision or order of the Director. The Zoning Board of Adjustment of the City of Asheville shall serve as the Housing Appeals Board and will hear and determine such appeals on the record.
  - (1) An appeal from any decision or order of the Director may be taken by any person aggrieved thereby. Such appeal shall be taken within ten days from the service of the order and shall be taken by filing with the Director and with the Board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Director shall forthwith transmit to the Board all papers constituting the record upon which the decision appealed from was made. When an appeal is from the decision of the Director refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Director requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Director certifies to the Board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the petitioner) a suspension of his requirement would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown. To this end the Board shall have all the powers of the officer from whom the appeal is taken.
  - (2) The Board shall fix a reasonable time for the hearing of appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse, affirm, in whole or in part, or may modify the decision of an order. The concurring vote of four members of the Board shall be necessary to reverse or modify any decision or order of the Director. The Board shall have

power also in passing upon appeals in any case where there are practical difficulties or undue hardships in the way of carrying out the strict letter of the Code, to adapt the application of the Code to the necessities of the case to the end that the spirit of the Code shall be observed, public safety and welfare secured, and substantial justice done.

- (3) Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted in Buncombe County Superior Court within 15 days after the written decision of the Board is filed or after a copy thereof is delivered to the appealing party, whichever is later. The decision of the Board may be delivered to the aggrieved party either by hand delivery or by any method authorized by the North Carolina Rules of Civil Procedure.
- (c) Injunction. Any person aggrieved by a decision rendered by the Board may petition the Superior Court for an injunction restraining the Code Enforcement Officer from carrying out the order or decision and the court may upon such petition, issue a temporary injunction restraining the Code Enforcement Officer pending a final disposition of the cause; provided, however, that such petition shall be filed within 30 days after issuance of the order or rendering of the decision.

#### Sec. 4-220. Other Unlawful Acts.

- (a) It shall be unlawful for any person, firm, or corporation to remove or permit the removal of, damage or deface any Complaint, Notice, Order or Certificate posted in accordance with the provisions of this Code, unless the Code Enforcement Officer consents in writing to such action.
- (b) It shall be unlawful for the owner of any dwelling or his agent or any person to lease, re-lease charge or accept rent for occupancy of any dwelling which does not have a Housing Certificate in accordance with the requirements of this Code.
- (c) It shall be unlawful for the owner or owner's agent(s) of any dwelling subject to the provisions of this Code to fail to furnish to the Buyer a copy of any required inspection findings or report prior to closing or other property transfer of such dwelling.

#### Sec. 4-221. Reserved.

#### Sec. 4-222. Invalidity.

Notwithstanding any other evidence of intent, it is hereby declared to be the controlling intent of the City Council of the City of Asheville that if any provision of this Code or the application thereof to any person, firm, or corporation or circumstances is held invalid, the remainder of this Code and the application of such provisions to persons, firms, or corporations or circumstances other than those to which it is held invalid, shall not be affected thereby.

Section 2. That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed, to the extent of such conflict.

Section 4. Except where herein specified, this ordinance shall be in full force and effect on October 15, 2003.

Read, approved and adopted this 14<sup>th</sup> day of October, 2003.

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City Clerk

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Mayor

Approved as to form:

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City Attorney